



Office of the Attorney General
State of Texas

DAN MORALES

ATTORNEY GENERAL

November 16, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of the General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2720

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119524.

The Texas Department of Health (the "department") received an open records request for records of the department's investigation of a complaint filed against Metropolitan Methodist Hospital of San Antonio. You state that some responsive information will be released to the requestor. You contend that other information is deemed confidential by law and therefore must be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Some of the requested records contain medical information that is made confidential by statutory law. Section 5.08 of article 4495b of Vernon's Texas Civil Statutes, the Medical Practice Act (the "MPA"), makes confidential "[c]ommunications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient" and "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." The records at issue contain information that appears to have been directly obtained from medical records and communications and such information may be disclosed only in accordance with the MPA. See V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We agree that the information you have marked as coming within the MPA must be withheld pursuant to section 552.101 of the Government Code.

You also contend that some of the records at issue must be withheld pursuant to section 48.101 of the Human Resources Code, which pertains to disclosure of information

about reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 reads in part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under . . . chapter [48 of the Human Resources Code];

(2) the identity of the person making the report; and

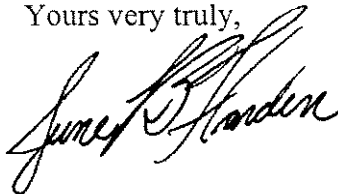
(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department rule and applicable federal law.

We agree that the information you have marked as confidential under section 48.101(a) of the Human Resources Code must be withheld. *See* Hum. Res. Code § 48.082(a); *see also id.* § 48.002 (definitions). These records must not be disclosed to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by department rule or federal law. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances). The remaining information must be released to the requestor, except as discussed above.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

Ref.: ID# 119524

Enclosures: Submitted documents

cc: Ms. Maggie Meyer
Metropolitan Methodist Hospital
1310 McCullough Ave.
San Antonio, TX 78212
(w/o enclosures)